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8 CHURCH OF SCIENTOLOGY INTERNATIONAL

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HUB LAW OFFICES

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF MARIN

11  
12 CHURCH OF SCIENTOLOGY )  
13 INTERNATIONAL, a California not- )  
14 for-profit religious corporation, )

15 Plaintiff, )

16 vs. )

17 GERALD ARMSTRONG; MICHAEL WALTON; )  
18 THE GERALD ARMSTRONG CORPORATION, a )  
California for-profit corporation; )  
DOES 1 through 100, inclusive, )

19 Defendants. )  
20 \_\_\_\_\_ )

CASE NO. 157680

CHURCH OF SCIENTOLOGY  
INTERNATIONAL'S MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN OPPOSITION TO  
ARMSTRONG'S MOTION TO  
COMMENCE COORDINATION  
PROCEEDINGS

Date: November 12, 1993  
Time: 9:00 a.m.  
Dept: 1  
Trial Date: None

21 I. INTRODUCTION

22 In December 1986, Plaintiff and Cross-Defendant Church of  
23 Scientology International ("CSI") sought to end a period of long and  
24 bitter strife with former member, Gerald Armstrong, Defendant and  
25 Cross-Complaint ("Armstrong"). It entered into a confidential  
26 settlement agreement ("Agreement") with Armstrong, the terms of  
27 which required Armstrong, to end his litigation against the Church,  
28 and to refrain from aiding others in litigation, to return the

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1 Church the documents which he had stolen and all copies of them, to  
2 refrain from discussing with third parties his experiences with the  
3 Scientology faith, and to keep confidential all terms of the  
4 Settlement Agreement itself.

5 Although CSI fully performed all of its obligations under the  
6 Agreement, Armstrong appears to consider that his obligations under  
7 the Agreement ended as soon as he had finished spending the money he  
8 extracted from plaintiff as the price of his signature. After  
9 transferring assets to make himself judgment proof, in June, 1991,  
10 Armstrong began a systematic campaign to foment litigation against  
11 plaintiff by providing confidential information, copies of the  
12 Agreement, declarations, and "paralegal" assistance to litigants  
13 actively engaged in litigation against his former adversaries.  
14 Although plaintiff has demanded that Armstrong end his constant and  
15 repeated breaches of the provisions of the Agreement, Armstrong  
16 appears to delight in renewing his annoying and harassing activi-  
17 ties, admitting to them in sworn declarations, and refusing to end  
18 his improper liaisons. He has even written to plaintiff's counsel,  
19 Andrew Wilson, stating that he continues to breached the Agreement  
20 even while he sleeps. (See, Declaration of Andrew H. Wilson at ¶3).

21 The first of the actions now pending in Los Angeles County was  
22 commenced in early 1992, seeking monetary damages for Armstrong's  
23 breaches and a preliminary injunction. After a series of delays  
24 engineered by Armstrong, the Honorable Ronald M. Sohigian entered a  
25 preliminary injunction on May 27, 1992. Armstrong appealed from  
26 Judge Sohigian's order. Armstrong has continued to breach the  
27 Agreement and to violate Judge Sohigian's injunction, resulting in  
28 two (2) orders to show cause issued by the Honorable Diane Wayne.



1 Hearings on those orders have been stayed, pending resolution of the  
2 appeal.

3 In a cursory manner, without specifically addressing the  
4 criteria for coordination, moving parties, defendants Gerald  
5 Armstrong and The Gerald Armstrong Corporation (collectively,  
6 "Armstrong") allude to judicial economy but never really address it.  
7 In fact, this Motion is premature, and the pending appeal concerning  
8 Armstrong even states in their brief "there is a sufficient  
9 likelihood of a dispositive ruling" on the underlying appeal. If  
10 so, a decision relating to coordination is unnecessary now, and this  
11 petition can only be viewed as a means to interfere with the right  
12 of plaintiff Church of Scientology International ("CSI") to proceed  
13 in this action.

14 The grounds for the appeal are that the underlying contract is  
15 illegal because enforcement by injunction violates Armstrong's first  
16 amendment rights, the public's first amendment rights and equal  
17 protection because it creates classes of litigants predicated on a  
18 classification of wealth, is unconstitutionally overbroad and  
19 impermissible vague and that the injunction is void since it is too  
20 indefinite and certain to be specifically performed. Armstrong also  
21 argues that he was under duress, that the contract was obtained by  
22 fraud and that the injunction is in restraint of trade. See,  
23 Exhibit A to the Declaration of Andrew H. Wilson ("AHW Decl.>").  
24 Since the standard on appeal is abuse of discretion, the likelihood  
25 of Armstrong's success is low.

26 As discussed below, the coordination motion should be denied  
27 for the following reasons:

- 28 1. This motion is premature since if Armstrong is successful



1 on appeal or the "legality" issue is decided in Armstrong's favor,  
2 the issue of coordination need not be addressed;

3 2. If Armstrong loses on appeal, and the Court entertains the  
4 request then, such request should be denied because:

5 (a) There are no common questions of fact or law;

6 (b) The convenience of the parties, witnesses and counsel  
7 will not be served if coordination is granted; and

8 (c) Armstrong II and III are ready to go to trial whereas  
9 this action is still in the discovery stages.

10 **II. THIS MOTION IS PREMATURE AND IS BEING USED**  
11 **AS A DELAY TACTIC IN THIS ACTION**

12 Apparently Armstrong argues that coordination is appropriate  
13 since the legality and enforceability of the settlement contract is  
14 a "common question." Even if, for argument's sake, this were so,  
15 a determination on coordination is premature. If Armstrong prevails  
16 in his appeal, none of the cases will go forward since there cannot  
17 be a breach of an illegal contract. If there is no judgment for  
18 breach of the agreement, then this action is inappropriate. On the  
19 other hand, if Armstrong is unsuccessful on appeal, then the issue  
20 of coordination may be raised. In other words, the sole purpose of  
21 coordination now is to join this action with the Los Angeles cases  
22 in order to wait and see if the contract is valid. If it is valid,  
23 there are no common questions as discussed below.

24 The thrust of this action is that Defendant Gerald Armstrong  
25 fraudulently conveyed his property in Marin County to his attorney,  
26 Defendant Michael Walton. If CSI is prevented from taking discovery  
27 in this action, Armstrong will be allowed to buy time to further  
28 hide his assets and hinder his present and future creditors. In



1 fact, it was recently learned that Mr. Walton has now transferred  
2 his interest in the subject property to his wife, Solina Walton, as  
3 her sole and separate property. (See, Exhibit B to AHW Decl.)  
4 Within the last week, defendant Michael Solina Walton deliberately  
5 mislead plaintiff into not opposing their motion to expunge the lis  
6 pendens by representing that this he had agreed to lifting and the  
7 re-recording of the lis pendens. (See, Declaration of Linda M.  
8 Fong).

9 These delay tactics cannot be condoned nor allowed and the  
10 motion for coordination should be denied.

11 **III. COORDINATION IS IMPROPER IN THIS CASE AS IT**  
12 **WILL NOT PROMOTE THE ENDS JUSTICE.**

13 If the Court is inclined to address the issue of coordination  
14 then, the facts weigh heavily against it. Section 404.1 of the Code  
15 of Civil of Procedure<sup>1</sup> provides that coordination of civil actions  
16 sharing a common question of fact or law is appropriate if one judge  
17 hearing all of the actions for all purposes in a selected site or  
18 sites will promote the ends of justice taking into account:

- 19 1. Whether the common question of fact or law is predominant-  
20 ing and significant to the litigation;
- 21 2. The convenience of parties, witnesses, and counsel;
- 22 3. The relative development of the actions and the work  
23 product of counsel;
- 24 4. The efficient utilization of judicial facilities and  
25 manpower;

26  
27  
28 <sup>1</sup> Unless otherwise stated, all section references hereafter are to  
the Code of Civil Procedure.



1           5.    The calendar of the courts;

2           6.    The disadvantages of duplicative and inconsistent rulings,  
3 orders, or judgments; and

4           7.    The likelihood of settlement of the actions without  
5 further litigation should coordination be denied.

6    **A.    There Are No Common Questions Of Fact Or Law.**

7           Armstrong II and III are actions arising out of breach of  
8 contract. Armstrong has admitted, and in fact boasted of breaching  
9 the Agreement on numerous occasions. The issue in those cases is  
10 whether he has any valid defense to liability. In this action for  
11 fraudulent conveyance the relevant issues are whether Defendant  
12 Gerald Armstrong fraudulently conveyed real property located in San  
13 Anselmo, Marin County, California to his attorney, Defendant Michael  
14 Walton, and whether other hassles by Armstrong, which CSI seeks to  
15 discover, were also fraudulent consequences.

16    **B.    Convenience Will Not Be Served By Coordination.**

17           This action is brought in the county in which the property and  
18 all the Defendants are located, the only county in which venue is  
19 proper. Code of Civil Procedure, Section 395. The attorneys are  
20 located in the counties of Marin and San Francisco and defendants  
21 reside in Marin County. See, AHW Decl.

22    **C.    The Los Angeles And Marin Actions Are Not At The Same Procedur-**  
23           **al Stages.**

24           If this case is moved to Los Angeles County, most of the  
25 parties and attorneys will be inconvenienced. The Los Angeles  
26 actions are ready to proceed to trial whereas this case is in the  
27 discovery phase.

28    / / /

1 D. If This Action Is Coordinated With The Others, It Would Hinder,  
2 Rather Than Assist, The Efficient Utilization Of Judicial  
3 Facilities And Manpower.

4 Because the issues are different, the addition of this action  
5 to the Los Angeles action would only add new questions of fact and  
6 law.

7 IV. CONCLUSION

8 Based on the foregoing, CSI respectfully request that the  
9 motion to commence coordination proceedings be denied.

10 Dated: 11-5, 1993

11 WILSON, RYAN & CAMPILONGO

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13 \_\_\_\_\_  
14 ANDREW H. WILSON  
15 LINDA M. FONG  
16 Attorneys for Plaintiff CHURCH OF  
17 SCIENTOLOGY INTERNATIONAL  
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1 State of California that the foregoing is true and correct.

2 Executed at San Francisco, California on November 5, 1993.

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*Yative A. Plummer*  
YATIVE A. PLUMMER

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